

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ERIC BURKE, CRAIG BARKER, RICK
CALTON, ARTHUR SALISBURY,
WILLIAM CORY TANNER, BRIAN
TANNER, and TONY WEAVER,
on behalf of themselves and all others similar
situated,

Plaintiffs,

v.

BIMBO BAKERIES USA, INC. and,
BIMBO FOODS BAKERIES
DISTRIBUTION, LLC,

Defendants.

Civil Action No. 7:19-cv-11101 (PMH)

ELECTRONICALLY FILED

JOINT MOTION TO STAY PROCEEDINGS

Pursuant to this Court’s inherent authority, Defendants Bimbo Bakeries USA, Inc. and Bimbo Foods Bakeries Distribution, LLC (“Defendants”) and Plaintiffs Eric Burke, Craig Barker, Rick Calton, Arthur Salisbury, William Cory Tanner, Brian Tanner, and Tony Weaver (“Plaintiffs”) (collectively, “the Parties”), by and through their undersigned attorneys, hereby submit this Joint Motion to Stay all case-related deadlines pending the Parties’ submission of a stipulation of dismissal with prejudice of all claims. The Parties hereby state as follows:

1. On October 6, 2020, the Parties engaged in private mediation of the instant action and four other federal court class actions (pending in the U.S. District Courts for the District of Maine, the District of Vermont, the District of New Hampshire, and the District of Massachusetts), two multi-plaintiff federal court actions (pending in the U.S. District Courts for the Southern District of New York and the Eastern District of Pennsylvania), and dozens of arbitrations pending before the American Arbitration Association (“AAA”).

2. Based on negotiations during and since the mediation, with the oversight and assistance of Hunter Hughes (one of the leading wage/hour mediators in the country), the Parties have agreed to settle the claims of Plaintiff along with their other litigation matters described above.

3. In light of the foregoing, the Parties respectfully request that the Court stay all deadlines pending settlement approval. Since the vast majority of the pending litigation is before the AAA, the Parties anticipate seeking approval for the settlement of all actions/arbitrations before a mutually agreeable arbitrator and thereafter would dismiss the federal court plaintiffs' claims, including in this action, with prejudice by agreement.

4. The U.S. District Court for the District of New Hampshire has already approved this approach in an FLSA collective action and Rule 23 state law class action, ordering the Parties to file a stipulation of dismissal of all 14 FLSA Plaintiffs (2 Named Plaintiffs and 12 Opt-in Plaintiffs) by November 13, 2020. *See* Unnumbered Endorsed Order, *Camp, et al. v. Bimbo Bakeries USA, Inc., et al.*, No. 1:18-cv-00378-SM (D.N.H. Oct. 14, 2020). The *Camp* action is the most advanced of all the matters subject to the Parties' recent mediation, with the Plaintiffs' Motion to Certify Class under Rule 23 currently pending and Defendants' motion to de-certify the FLSA collective action otherwise due in the ensuing weeks. *See id.* at ECF No. 103. If the Court would like to approach approval in this action differently, counsel for the Parties can be available at the Court's convenience.

WHEREFORE, the Parties respectfully request that the Court stay all case-related deadlines and order the Parties' to submit a stipulation of dismissal with prejudice of all claims within 30 days.

Dated: October 15, 2020

/s/ *Matthew Thomson*

/s/ *Michael J. Puma*

LICHTEN & LISS-RIORDAN, P.C.

Harold Lichten*
Matthew Thomson*
Zachary Rubin
Shannon Liss-Riordan
729 Boylston St., Suite 2000
Boston, MA 02116
hlichten@llrlaw.com
mthomson@llrlaw.com

MORGAN, LEWIS & BOCKIUS LLP

Michael J. Puma
1701 Market St.
Philadelphia, PA 19103-2921
michael.puma@morganlewis.com

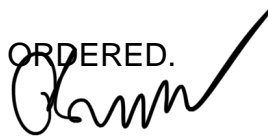
Attorneys for Defendants

Samuel A. Alba
Friedman & Ranzenhofer, P.C.
74 Main Street
Akron, NY 14001
716-631-9999
sam@legalsurvivalcom

Attorneys for Plaintiffs

Application granted. The parties shall submit a joint stipulation of dismissal of all claims by November 16, 2020.

SO ORDERED.



Philip M. Halpern, U.S.D.J.

Dated: New York, NY
October 16, 2020